THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE D. APPA RAO

–

W.A.No. 983 of 2004

Date: 17.02.2006

Between:

Commandant, Central Industrial Security Force, Rourkela Steel Plant, Orissa & another

…… Appellants.

And

T. Perumal

……. Respondent

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE D. APPA RAO

–

W.A.No. 983 of 2004

JUDGMENT: *(per the Hon'ble Sri Justice B. Prakash Rao)*

Heard Sri M. Ganga Rao, the learned counsel appearing for the appellants and also Sri J.M. Naidu, the learned counsel for the respondent.

The appellants are the employers, who filed this appeal, *inter alia*, assailing the order dated 04.09.2003 allowing W.P.No.12066 of 1999, filed at the instance of the respondent-employee, wherein he sought a writ of *mandamus* declaring the action of the appellants in removing him from service as per the orders dated 26.02.1998, as confirmed by the appellate authority, the second appellant, as per the orders dated 06.01.1999, as illegal and arbitrary.

Admittedly, the respondent herein was working as a constable in the Central Industrial Security Force (for short 'CISF') and was posted at Roorkela Steel Plant at the relevant point of time. Having charged with the charge sheet on 10.06.1997 on certain allegations, a disciplinary enquiry was conducted against the respondent which resulted in his suspension. After holding an enquiry, ultimately, he was removed from the service. Challenging the same, he preferred an appeal before the second appellant, who confirmed the order of removal. Therefore, he filed the writ petition.

On appreciation of the material available on record, the learned Single Judge allowed the writ petition, on the ground that the appellants have no jurisdiction to inquire into the misconduct, even assuming that such misconduct was committed by the respondent, under the service regulations as applicable to the respondent.

The learned counsel for the appellant, while placing reliance on Section 18 of the Central Industrial Security Force Act, 1968, especially sub-clause 2(A) thereof, which is to the effect that the Central Government may invest the Commandant with the powers of a Magistrate of any class for the purpose of inquiry into or trying any offence committed by an enrolled member of the Force and punishable under the Act, or any offence committed by an enrolled member of the Force against person or property of another member of the Force, submits that the Commandant is empowered to inquire into against the respondent herein, even in respect of the allegation or the charge or in respect of any acts that have been committed outside the purview of the Force as such.

Having heard the learned counsel on either side and having perused the material available on record, it is to be noted that the Central Government has to issue any notification or pass separate orders conferring such powers on the Commandant for applicability of the regular procedure as contemplated in the

Code of Criminal Procedure.

The learned counsel for the appellant did not bring to the notice of this Court any such notification or orders conferring the powers on the Commandant. It is also to be seen as to whether the charges as framed against the respondent herein include the acts that occurred outside the purview of the Force. Even assuming that the other two charges are well within the purview of the Commandant, they cannot be merged with that of the charge which is not within the purview of the Commandant and conduct a common inquiry and the Commandant cannot take the recourse to exercise the powers as that of a Court invoking the provisions of the Code of Criminal Procedure and impose any punishment. The learned Single Judge, by referring to all these provisions, especially the regulations concerned, found that the entire inquiry conducted and the ultimate punishment imposed is totally without any jurisdiction.

Since the learned Single Judge did not go into the merits of the allegations or the charges, we are also not inclined to go into the same.

Having regard to the provisions of the Central Industrial Security Force Act, vis-à-vis that of the Code of Criminal Procedure, We are in entire agreement with the findings as arrived at by the learned Single Judge. However, we are of the opinion that it is always open for the appellants herein to discern the charges and take appropriate action in accordance with law i.e. to proceed against the respondent in respect of the charges which can be inquired into by the Commandant and also initiating criminal action by filing proper complaint before the competent Court or the police concerned and prosecute such an offence as provided under the law. In the event of any such action being taken either by the Commandant himself or by any Court of law, it is needless to mention that the case of the respondent be considered on its own merits and in accordance with law being uninfluenced by any of the findings given in these proceedings.

Subject to the above, the writ appeal is dismissed. There shall be no order as to costs.

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(B.PRAKASH RAO.J)

(D. APPA RAO.J)

ksld

Dt.14.02.2006